IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.633 of 2006

Shankar Ramji Panchal & ors. .. Appellants

versus

Homeland Realtore & Developers & ors.. Respondents

...

Mr.Salil Shah with Mr.Deepak Trivedi i/b Sunil Nair for the appellants.

Mr.Bharat Choudhary Sr.Counsel i/b S.M. Bandkar for respondent nos.1 and 2.

Mr.V.T. Dubey for respondent no.3.

Mr.Sachin V. Masurkar for respondent nos.4 to 8.

Respondent no.9 served.

CORAM : D.G. KARNIK, J

DATED : 18th September 2006

P.C.:

1. Heard learned counsel for the parties. By consent, appeal is heard finally at the stage of

admission itself.

2. Learned counsel for the appellant states that respondent no.9 who is not present before the court has also been served and he undertakes to file affidavit of service, if not already filed, within a period of one week. Undertaking is recorded and accepted. In any event, I am satisfied that in view of the proposed order, interest of respondent no.9 is not adversely effected by the order that I propose to pass in this appeal and hence it is not necessary to issue any further notice to her.

3. Respondent nos.1 and 2 who are the original plaintiffs filed a suit, bearing 1220 of 2006, against the appellants and respondent nos.2 to 9 in the City Civil Court at Mumbai for relief of an injunction. In the said suit, respondent nos.1 and 2 took out a motion for an interim injunction. By an order dated 3rd August 2006, the Court made the motion absolute and granted injunction in terms of prayer clauses (a) and (c). That order is impugned in this appeal.

4. Record and Proceedings of the trial court was called for by an order dated 4th September 2006.

Record has been received. I have perused the record.

5. From the record and proceedings and the roznama in the suit, it appears that the motion for injunction was fixed for hearing on 12th July 2006. On that day, the plaintiff filed the written arguments and the motion was adjourned to 17th July 2006 and then to 21st July, 2006. On 21st July, 2006 the arguments of the defendant nos.2 to 6 and the plaintiffs in rejoinder were concluded and the motion was adjourned for orders, firstly to 21st July 2006 and then to 26th July 2006. On 26th July 2006, the learned Judge directed the parties to produce photographs of the suit site and adjourned the matter to 31st July 2006. It appears that on 31st July, 2006 the photographs were produced in the court by the parties and the learned Judge commenced the dictation of the order in the open court and after dictating about four paragraphs thereof adjourned the matter to 2nd August, 2006 by directing the advocates to file compilation of all certified copies of all court proceedings which were referred to in the plaint. On 2nd August 2006, counsel for the plaintiff filed the compilation of the documents containing about 309 pages. The compilation contained not only the certified copies of the documents referred

to in the plaint but several other documents were also included in the compilation. Counsel for the defendant therefore asked for time, for filing his submissions to the documents produced in the compilation. Learned Judge however granted only one day's time and adjourned the matter to 3rd August 2006 and proceeded to pronounce the order on that date.

6. Learned counsel for the appellants- original defendants submitted before me that it was impossible for the defendants to give reply to all the 309 pages of the compilation in a day. The compilation contained not only the documents which were referred to in the plaint but also several other documents and in the circumstances sufficient opportunity ought to have been given to the defendants for filing of a rejoinder and documents in rebuttal. I see substance in the grievance of the defendants who are the appellants in this court. In this view of the matter, it would be appropriate to remand the matter back to the trial court for giving an opportunity to the appellants to file their reply and evidence in rejoinder to the compilation in documents filed by respondent nos.1 and 2. If such course is followed, the defendants would have a reasonable opportunity of meeting the

plaintiffs'case. Hence, I pass the following order:

O R D E R

. Impugned order is set aside and the matter is remanded back for re-hearing to the trial court. The trial court shall give an opportunity to the appellants and all the defendants in the suit to file rejoinder and documents if any, in rebuttal of the documents filed by the plaintiffs and thereafter decide the matter afresh.

. Considering the urgency in the matter, the trial court is requested to decide the motion as expeditiously as possible and in any event within a period of two months from the receipt of this order.

. All concerned shall act on a copy of this order duly authenticated by the Court sheristedar.

D.G. KARNIK, J